IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11975 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIL ATMARAM PANCHAL

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY & OTHER

Appearance:

1. Special Civil Application No. 11975 of 2003

MS NITA C BANKER for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

14.2.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon five offences registered against the petitioner on 31.5.2002, 18.8.2002, 7.10.2002, 22.12.2002 and 31.1.2003. All the offences are registered against the petitioner for the theft of car-tape of Pioneer Company in all the cases. In some of the cases, the car tape are recovered from the petitioner. In addition to this, the detaining authority also relied upon the two in-camera statements as recorded by the proposing authority on 8.2.2003 and 9.2.2003 as verified by the detaining authority on 12.2.2003 revealing incidents of 24.12.2002 and 2.1.2003. From the above material, the order impugned came to be passed.

Heard ld. advocate Ms. Nita Banker for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that the matter can be disposed of on the ground that whether there was sufficient material before the detaining authority to come to the conclusion that the activity of the petitioner was prejudicial to the maintenance of public order. The five offences registered against the petitioner appears to be under sec. 379 of IPC for the theft of car tape and ipso facto it could not be said that thereby public order is adversely affected. While going through the statements as recorded by the proposing authority it clearly appears that both of them are individual disputes and quarrel picked up by the petitioner which would also not affect the public order. It is always degree and extent of the reach of the objectional activity upon the society which is fatal for considering the question whether man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order. When the objectional activities were examined, it is found that at the most these activities can be taken care by maintenance of law and order and cannot be said to be an activities affecting the public order. Therefore, the subjective satisfaction reached by the detaining

authority as to the activity prejudicial to the public order is vitiated on account of non-application of mind. The order impugned therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 14.2.2003 by the Police Commissioner, Ahmedabad City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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